

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Joseph Lee Bellanger,

Civ. No. 19-2770 (PAM/BRT)

Petitioner,

v.

ORDER

Warden Guy Bosch,

Respondent.

This matter is before the Court on the Report and Recommendation (“R&R”) of United States Magistrate Judge Becky R. Thorson dated November 24, 2020. The R&R recommends that Petitioner Joseph Bellanger’s Petition for habeas-corpus relief be denied and no certificate of appealability be granted. Bellanger submitted a “reply,” addressed to Magistrate Judge Thorson, dated December 7, 2020. Although this document does not mention the R&R, the Court will construe it as an objection to the R&R.

This Court must review de novo any portion of an R&R to which specific objections are made. 28 U.S.C. § 636(b)(1); D. Minn. L.R. 72.2(b). After conducting the required review and for the following reasons, the Court adopts the R&R. (Docket No. 21).

The R&R determined that the Petition was untimely. (R&R at 9.) Bellanger’s filing does not address this conclusion, but rather argues that because he alleges a fundamental miscarriage of justice, the one-year limitation period should not apply. As the R&R noted, however, the Court may toll the statute of limitations only in certain circumstances.

Bellanger does not address whether he meets those circumstances and the Court agrees with the R&R's conclusion that he does not. (R&R at 9 n.5.)

Moreover, as the R&R noted, Bellanger's actual-innocence claim does not toll the limitations period here, because he has not proffered any new evidence, not available at his trial, that would change the result of that proceeding. (R&R at 11.)

The R&R correctly determined that the Petition is not timely, and further that the issuance of a certificate of appealability is not appropriate. Accordingly, **IT IS HEREBY ORDERED that:**

1. The R&R (Docket No. 21) is **ADOPTED**;
2. The Petition (Docket No. 1) is **DENIED**; and
3. No Certificate of Appealability will issue.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: December 22, 2020

s/ Paul A. Magnuson
Paul A. Magnuson
United States District Court Judge